

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	
v.)	Crim. No. 13-10262-DPW
)	
MICHAEL P. O'DONNELL,)	
Defendant)	

**UNITED STATES' MOTION TO COMPEL ATTORNEY JEFFREY DENNER
TO COMPLY WITH THIS COURT'S OCTOBER 11, 2017 ORDER**

The United States hereby moves for entry of an Order compelling attorney Jeffrey Denner to comply with this Court's October 11, 2017 Order (Dkt. #178). The United States further requests that the Court order attorney Denner to comply with the Order within two business days of entering the Order on the docket in this case. A proposed Order is attached. As grounds for this motion, the government states as follows:

On September 20, 2017, the government filed a Motion for Order Regarding Waiver of Attorney-Client Privilege and for Extension of Time to File Response. Dkt. #177. In pertinent part, the government's motion requested that the Court enter an order "deeming the attorney-client privilege to be waived with respect to [the] issues" raised in defendant Michael O'Donnell's §2255 Petition, and "authorizing and directing attorneys Jeffrey Denner, Joseph Keller, James Sultan, and Charles Rankin to disclose to counsel for the United States such matters as are reasonably necessary to enable the United States to respond to the Petition." Motion at pg. 6. The government's motion requested that the Court order the named attorneys to 1) "promptly produce to the government all correspondence and email between themselves and O'Donnell, as well as all records that memorialize their oral communications with O'Donnell, which pertain to the issues raised in the Petition;" 2) "produce all internal memoranda, notes, and other written materials, which contain [the attorneys'] analysis of O'Donnell's criminal case, including the legal issues,

the evidence, and potential defenses;” and 3) “discuss all such matters with counsel for the United States, [] file affidavits addressing O’Donnell’s allegations, if requested by the government, and [] testify at a hearing, if called to do so.” *Id.* (emphasis added).

On October 11, 2017, the Court allowed the government’s motion, and extended the time for the government to file a response to O’Donnell’s §2255 Petition to December 10, 2017. That same day, the attorney for the government sent an email to all four attorneys, informing them of the substance of the government’s motion and the Court’s Order, and asking when they anticipated producing the materials that the Court had ordered they produce.

On October 11, 2017, attorney Denner responded to the email by telephone, and briefly discussed with the undersigned some of the issues raised in O’Donnell’s Petition. At attorney Denner’s request, and to assist him in further refreshing his recollection about those issues, the undersigned forwarded to him by email copies of several transcripts and trial pleadings.

On October 12, 2017, attorneys Rankin and Sultan filed a formal response to the Court’s October 11, 2017 Order. Dkt. #179. On October 20, 2017, attorney Keller—who is also attorney Denner’s associate—responded by email to the Court’s Order by producing two relevant email strings between himself and O’Donnell. In that email, attorney Keller advised that he had “not had the opportunity to inspect Attorney Denner’s files and [did] not currently have access to them.” On October 23, 2017, the undersigned sent an email to attorney Keller asking whether he knew when he would get access to attorney Denner’s files, or if the undersigned should contact attorney Denner directly. Attorney Keller responded that he did “not know when [he] would get access to the O’Donnell files” . . . but would “reach out to the office manager again and find out when they will be available.”

Hearing nothing further, on October 30, 2017, the undersigned sent an email to attorney

Denner, to again ask when he anticipated producing the records in compliance with the Court's Order. Attorney Denner did not respond. On November 8, 2017, the undersigned left a voicemail on attorney Denner's cellphone asking the same question, then followed up with an email. Attorney Denner did not respond to either.

On November 13, 2017, the undersigned contacted attorney Denner's office by telephone and spoke with a secretary/receptionist who answered the phone. The undersigned informed her that he had left attorney Denner voicemail and emails messages but had received no response. She advised that attorney Denner has been busy with case work, but that she would let him know the undersigned was trying to reach him. Attorney Denner's secretary/receptionist was informed that if attorney Denner did not respond and produce the records promptly, the government would have no recourse but to seek a Court Order compelling him to do so. Since then, attorney Denner has not communicated with the undersigned, and has not produced the documents ordered by the Court.

For all the above reasons, the government moves for entry of an Order requiring O'Donnell to comply with the Court's October 11, 2017 Order, by producing to the government within two business days of entering such Order: 1) all correspondence and email between O'Donnell and attorneys Denner or Keller, as well as all records that memorialize their oral communications with O'Donnell, which pertain to the issues raised in the §2255 Petition; and 2) all internal memoranda, notes, and other written materials, which contain the attorneys' analysis of O'Donnell's criminal case, including the legal issues, the evidence, and potential defenses.

Respectfully submitted,

WILLIAM D. WEINREB
ACTING UNITED STATES ATTORNEY

By: /s/ Mark J. Balthazard
MARK J. BALTHAZARD
Assistant U.S. Attorney
BBO # 544463
Mark.Balthazard@usdoj.gov
Assistant U.S. Attorney
1 Courthouse Way, Suite 9200
Boston, MA 02210
(617) 748-3100

Dated: November 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that this document, filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). There are no non-registered participants.

Dated: November 14, 2017

/s/ Mark J. Balthazard
MARK J. BALTHAZARD